

Senate Bill No. 121

CHAPTER 571

An act to amend Sections 48853, 56155.7, 56157, 56342.1, and 56366.9 of the Education Code, relating to pupils.

[Approved by Governor September 26, 2012. Filed with
Secretary of State September 26, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 121, Liu. Pupils: foster children: special education.

Existing law requires a pupil who is placed in a licensed children's institution or foster family home to attend programs operated by the local educational agency unless the pupil is entitled to remain in his or her school of origin, the pupil has an individualized education program requiring placement elsewhere, or the pupil's parent or guardian, or other person holding the right to make educational decisions for the pupil, determines that it is in the best interests of the pupil to be placed in another educational program.

This bill would require that, if the pupil's parent or guardian, or other person holding the right to make educational decisions for the pupil, makes that determination, he or she shall provide a written statement to that effect to the local educational agency, as specified. The bill would authorize a local educational agency to provide a parent, guardian, or other person holding the right to make educational decisions for the pupil with specified information, including, among other things, that the pupil has the right to attend a regular public school in the least restrictive environment.

Existing law provides that no local educational agency shall refer an individual with exceptional needs residing in a licensed children's institution or foster family home to a nonpublic, nonsectarian school unless the services required by the individualized education program of the pupil can be assured, and that before a local educational agency places an individual with exceptional needs in, or refers such an individual to, a nonpublic, nonsectarian school, the school district, special education local plan area, or county office of education shall initiate and conduct a meeting to develop an individualized education program for the pupil.

This bill would specify that these pupils shall not be referred to, or placed in, a nonpublic, nonsectarian school unless their individualized education programs specify that the placement is appropriate. The bill would also specify that the meeting that is required to take place to develop an individualized education program shall be conducted pursuant to specified provisions. To the extent this bill would require local educational agencies to perform additional duties, this bill would impose a state-mandated local program.

Existing law prohibits a licensed children's institution from requiring as a condition of residential placement that it provide the appropriate educational programs to individuals with exceptional needs residing there through a nonpublic, nonsectarian school or agency owned, operated by, or associated with, it.

This bill would also prohibit a licensed children's institution from referring or placing a pupil in a nonpublic, nonsectarian school.

This bill would prohibit a licensed children's institution from requiring that a child be identified as an individual with exceptional needs as a condition of admission or residency.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 48853 of the Education Code is amended to read:

48853. (a) A pupil described in subdivision (a) of Section 48853.5 who is placed in a licensed children's institution or foster family home shall attend programs operated by the local educational agency, unless one of the following applies:

(1) The pupil is entitled to remain in his or her school of origin pursuant to paragraph (1) of subdivision (d) of Section 48853.5.

(2) The pupil has an individualized education program requiring placement in a nonpublic, nonsectarian school or agency, or in another local educational agency.

(3) The parent or guardian, or other person holding the right to make educational decisions for the pupil pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055, determines that it is in the best interests of the pupil to be placed in another educational program, in which case the parent or guardian or other person holding the right to make educational decisions for the pupil shall provide a written statement that he or she has made that determination to the local educational agency. This statement shall include a declaration that the parent, guardian, or other person holding the right to make educational decisions for the pupil is aware of all of the following:

(A) The pupil has a right to attend a regular public school in the least restrictive environment.

(B) The alternate education program is a special education program, if applicable.

(C) The decision to unilaterally remove the pupil from the regular public school and to place the pupil in an alternate education program may not be financed by the local educational agency.

(D) Any attempt to seek reimbursement for the alternate program may be at the expense of the parent, guardian, or other person holding the right to make educational decisions for the pupil.

(b) For purposes of ensuring a parent, guardian, or other person holding the right to make educational decisions for the pupil is aware of the information described in subparagraphs (A) to (D), inclusive, of paragraph (3) of subdivision (a), the local educational agency may provide him or her with that information in writing.

(c) Before any decision is made to place a pupil in a juvenile court school as defined by Section 48645.1, a community school as described in Sections 1981 and 48660, or other alternative educational setting, the parent or guardian, or person holding the right to make educational decisions for the pupil pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055, shall first consider placement in the regular public school.

(d) If any dispute arises as to the school placement of a pupil subject to this section, the pupil has the right to remain in his or her school of origin, as defined in subdivision (e) of Section 48853.5, pending resolution of the dispute. The dispute shall be resolved in accordance with the existing dispute resolution process available to any pupil served by the local educational agency.

(e) This section does not supersede other laws that govern pupil expulsion.

(f) This section does not supersede any other law governing the educational placement in a juvenile court school, as defined by Section 48645.1, of a pupil detained in a county juvenile hall, or committed to a county juvenile ranch, camp, forestry camp, or regional facility.

(g) Foster children living in emergency shelters, as referenced in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.), may receive educational services at the emergency shelter as necessary for short periods of time for either of the following reasons:

(1) For health and safety emergencies.

(2) To provide temporary, special, and supplementary services to meet the child's unique needs if a decision regarding whether it is in the child's best interests to attend the school of origin cannot be made promptly, it is not practical to transport the child to the school of origin, and the child would otherwise not receive educational services.

The educational services may be provided at the shelter pending a determination by the person holding the right regarding the educational placement of the child.

(h) All educational and school placement decisions shall be made to ensure that the child is placed in the least restrictive educational programs and has access to academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child.

SEC. 2. Section 56155.7 of the Education Code is amended to read:

56155.7. A licensed children's institution shall not require that a child be identified as an individual with exceptional needs as a condition of admission or residency.

SEC. 3. Section 56157 of the Education Code is amended to read:

56157. (a) In providing appropriate programs to individuals with exceptional needs residing in licensed children's institutions or foster family homes, the local educational agency shall first consider services in programs operated by public educational agencies for individuals with exceptional needs. If those programs are not appropriate, special education and related services shall be provided by contract with a nonpublic, nonsectarian school.

(b) (1) An individual with exceptional needs residing in a licensed children's institution or foster family home shall not be referred to, or placed in, a nonpublic, nonsectarian school unless his or her individualized education program specifies that the placement is appropriate.

(2) If special education and related services are provided by contract with a nonpublic, nonsectarian school, or with a licensed children's institution under this article, the terms of the contract shall be developed in accordance with Section 56366.

(c) If an individual with exceptional needs residing in a licensed children's institution or foster family home is placed in a nonpublic, nonsectarian school, the local educational agency that made the placement shall conduct an annual evaluation, in accordance with federal law as part of the annual individualized education program process, of whether the placement is the least restrictive environment that is appropriate to meet the pupil's needs.

(d) If an individual with exceptional needs residing in a licensed children's institution or foster family home is placed in a nonpublic, nonsectarian school, the nonpublic, nonsectarian school shall report to the local educational agency that made the placement, on a quarterly or trimester basis, as appropriate, the educational progress demonstrated by the individual with exceptional needs towards the attainment of the goals and objectives specified in the individual's individualized education program. Pursuant to federal law, no local educational agency shall refer a pupil to a nonpublic, nonsectarian school unless the services required by the individualized education program of the pupil can be ensured.

SEC. 4. Section 56342.1 of the Education Code is amended to read:

56342.1. Before a local educational agency places an individual with exceptional needs in, or refers an individual to, a nonpublic, nonsectarian school, the district, special education local plan area, or county office of education shall initiate and conduct a meeting to develop an individualized education program in accordance with Sections 56341.1 and 56345 and in accordance with Section 300.325(a) of Title 34 of the Code of Federal Regulations. An individual with exceptional needs shall not be referred to, or placed in, a nonpublic, nonsectarian school unless his or her individualized education program specifies that the placement is appropriate.

SEC. 5. Section 56366.9 of the Education Code is amended to read:

56366.9. A licensed children's institution at which individuals with exceptional needs reside shall not require as a condition of residential

placement that it provide the appropriate educational programs to those individuals through a nonpublic, nonsectarian school or agency owned, operated by, or associated with, a licensed children's institution. Those services may only be provided if the special education local plan area determines that appropriate public alternative educational programs are not available. A licensed children's institution shall not refer a pupil to, or place a pupil in, a nonpublic, nonsectarian school.

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.